S.B. Civil Misc. Appeal No.1562/2006

Employees Insurance Corp. & anr.
vs.
M/s. Goyanka Textile Industries & anr.

Date : 13.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Soni, for the appellants.
Mr. PD Bohra, for the respondents.

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Heard learned counsel for the parties.

The present appeal is against the order dated 16.2.2005 by which the Employees State Insurance Court, Pali allowed the respondents' application under Section 75 of the Employees State Insurance Act, 1948 (for short 'the Act of 1948') and quash the demand of Rs.12,405/- raised by the appellant department.

Brief facts of the case are that on 7.1.1998, the premises of the respondents were inspected and on the basis of the report prepared, a demand of Rs.12,405/- was raised which has been challenged by the respondents by filing application under Section 75 of the Act of 1948.

It appears from the impugned order that before the court below, the respondent/applicant gave his statement and produced witness Kishna Ram and also produced the relevant documents. The court below after considering each

and every entry of the relevant register, relied upon the relevant document produced by the respondent and did not believe the statement of witness of the appellant. The trial court thereafter recorded finding of fact that the entries made in the registers are trustworthy and, therefore, the demand of Rs.12,405/- raised against the respondent is illegal.

Learned counsel for the appellant vehemently submitted that the respondent fabricated the registers which is apparent from its look because of the reason that in the payment register, there are names of number of persons but their father's name has not been shown. It is also submitted that the thumb impression of the employees are also dissimilar for the same person. It is also submitted that in view of the above, it is clear that the document produced by the respondent is forged and fabricated to avoid the liability.

I considered the submissions of learned counsel for the appellant and perused the facts of the case.

Firstly, it is a pure question of fact which has been decided by the court below after appreciation of evidence and after accepting evidence of one party. Reappreciation of evidence by this Court is not a ground for setting aside of the order of court below after taking a different view. It is not a case of misreading of evidence.

So far as comparison of thumb impressions is concerned,

an opinion might have been formed by the appellant about dissimilarities of two thumb impressions but there is no evidence on the record that the thumb impressions of one person is not same in the register.

In view of the above, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya